IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 357 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

SURESHKUMAR KANTILAL RAVAL

Appearance:

1. Criminal Appeal No. 357 of 1994

MR KT DAVE, A.P.P. for Petitioner No. 1

MR YOGESH S LAKHANI for Respondent No. 1 (absent)

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 21/01/2003

ORAL JUDGEMENT

1. The respondent - accused was serving as Talati-cum-Mantri at Moti Mahudi between 27.4.1985 to 17.4.1996. The Charge Ex.4 was framed against him by the learned J.M.F.C., Dhanera for committing mis-appropriation of Rs.297/- for which he had received during auction of babool tree on 28.8.1985 and the same was deposited by him only on 17.4.1986. He was tried by the learned J.M.F.C., Dhanera for the offence u/s.409,

465, 468 I.P.Code. Considering the evidence led before him the learned Magistrate convicted the accused for the offences u/ss. 409, 465, 468 I.P.Code and sentenced him to suffer 4 months R.I. and to pay fine of Rs.500/- i/d further to under-go 1 month's S.I. for the offence u/s. 409 I.P.Code, 2 months R.I. for the offence u/s. 465 I.P.C and to pay fine of Rs.250/- i/d to further under-go 15 days S.I. and for the offence u/s.468 I.P.C. 2 months R.I. and to pay fine of Rs.250/- i/d to further under-go 15 days S.I. All the substantial sentences were ordered to run concurrently.

2. This impugned Judgment and order of conviction dated 17.5.1991 passed by the learned Magistrate,Dhanera in Criminal Case No.413 of 1987 was challenged by the respondent - accused before the Court of learned Sessions Judge, Banas Kantha at Palanpur in Criminal Appeal No.7/91. The learned Addl. Sessions Judge by his impugned Judgment and order dated 30.12.1993 acquitted the respondent - accused for all the charges levelled against him by setting aside the impugned Judgment and order of conviction and sentence passed by the learned Magistrate. This Order of acquittal passed by the learned Addl. Sessions Judge, Palanpur in Criminal Appeal No.7/91 acquitting the respondent - accused is challenged in present Appeal by the State of Gujarat.

3. Learned A.P.P. Shri Dave, appearing for the appellant - State of Gujarat was not in a position to assail the impugned Judgment and order of acquittal passed by the learned Addl. Sessions Judge, Palanpur, acquitting the respondent - accused for the aforesaid charges. It is an admitted fact that meagre amount of Rs.297/- received by the respondent - accused was deposited, but little late. It can be said to be, at the most, temporary mis-appropriation. That is also an offence, but having regard to the peculiar facts and circumstances of the case and that the offence alleged to have been committed way back in May, 1985 i.e. almost 18 years from today, this Court would not like to interfere with the impugned Judgment and order of acquittal passed by the learned Addl. Sessions Judge, Palanpur, when the learned Addl. Sessions Judge has given cogent reasons for acquitting the accused and setting aside the order of conviction and sentence passed by the learned Magistrate.

4. In view of the above discussion this Appeal fail and is hereby dismissed.

Date : January 21, 2003 (B.J.Shethna, J.)

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